

14:24:05 1 MR. BORDNER: I'm going to object. We've already been  
:24:10 2 over this drafting issue. And for you to suggest that he  
14:24:12 3 drafted it in the context of his earlier answer is misstating  
14:24:16 4 his prior testimony.

14:24:19 5 Q. You can answer.

14:24:23 6 A. Repeat the question, please.

14:24:35 7 (Record read by the reporter.)

14:24:35 8 A. No, he just -- well, I'm not sure whether he spoke to  
14:24:42 9 me directly or spoke to other people in the firm. I can't  
14:24:49 10 recall, other than what we had discussed about separating the  
14:25:02 11 ownership and management.

14:25:06 12 Q. Just so I'm clear; with respect to Exhibit 7, you  
14:25:14 13 recall Satoshi Kinoshita telling you that he wanted the  
:25:15 14 management agreement because they wanted to separate the  
14:25:20 15 ownership from the management; is that correct?

14:25:22 16 A. Well, they were forming the management company to help  
14:25:30 17 the employees.

14:25:35 18 Q. Anything else that you can recall Satoshi Kinoshita or  
14:25:38 19 anyone from Sports Shinko telling you as to why they wanted you  
14:25:44 20 to draft Exhibit 7?

14:25:46 21 A. Not to my recollection.

14:25:50 22 Q. Who were you and your firm drafting this agreement  
14:25:56 23 for? On whose behalf?

14:26:02 24 A. In this particular agreement, it's Queen Kapi`olani  
14:26:06 25 Hotel.

14:26:10 1 Q. You drafted Exhibit 7 as the attorney for Queen  
:26:13 2 Kapi`olani Hotel?

14:26:17 3 A. Our firm did. And a clarification, of course, we  
14:26:26 4 participated in the drafting of the agreement.

14:26:32 5 Q. On page 26, section 9.6, 9.7, references a Termination  
14:26:41 6 Fee. Do you see that?

14:26:41 7 A. Yes.

14:26:42 8 Q. Do you recall any discussions about why there's a  
14:26:45 9 termination fee in there?

14:26:48 10 A. I don't recall at this time.

14:26:55 11 Q. Do you recall anyone at your firm, including yourself,  
14:27:03 12 questioning anyone at Sports Shinko as to why to include a  
14:27:09 13 termination fee?

:27:15 14 A. I think that -- I think this agreement was pulled from  
14:27:28 15 drafts, and I'm not too sure who discussed the termination fee  
14:27:34 16 aspects with Mr. Satoshi Kinoshita.

14:27:41 17 Q. Can you recall --

14:27:41 18 A. -- pertinent to discussions.

14:27:45 19 Q. Can you recall any discussions?

14:27:47 20 A. I don't recall any discussions.

14:27:48 21 Q. Do you remember you or anyone in your firm advising  
14:27:53 22 your clients Sports Shinko Waikiki that including the  
14:27:59 23 termination fee was not beneficial to it?

14:28:03 24 A. Not beneficial to?

14:28:06 25 Q. Your client Sports Shinko Waikiki.

14:31:53 1 A. The specifics of this agreement?

:31:54 2 Q. Correct, Exhibit 7, and the ones that are similar to

14:31:58 3 it for the other properties.

14:32:01 4 A. No. It was basically instructions of the client to go

14:32:05 5 ahead and prepare management agreements. You know, we were,

14:32:13 6 throughout this entire relationship, we were attorneys and we

14:32:17 7 were told, basically we were asked to do certain things from a

14:32:22 8 legal standpoint. And we were basically following instructions.

14:32:25 9 And if they wanted to do something, then they'd

14:32:29 10 execute the documents. If they wanted us to draft documents, we

14:32:32 11 draft 'em. If they didn't want to sign this document, they

14:32:37 12 didn't have to sign it. And that's basically what it is.

14:32:38 13 So if we drafted documents, sent to them for

:32:43 14 execution, they signed it or they didn't sign it. So basically

14:32:43 15 we'd like to think that we explained it to them as to what the

14:32:47 16 transaction was about, what it's all about. But insofar as the

14:32:53 17 business decision to do that, it was basically their decision.

14:32:58 18 Q. So by that answer, I take it your answer is no, you

14:33:01 19 did not independently on your own form an opinion as to whether

14:33:08 20 Sports Shinko's Hawaii entity should enter into management

14:33:13 21 agreements with the terms as set forth in Exhibit 7; is that

14:33:17 22 fair?

14:33:17 23 A. I didn't do an analysis as to why they should and

14:33:23 24 should not.

14:33:23 25 Q. That's fine. I understand that, no analysis. But my

14:33:28 1 question is a little bit different. I'm asking apart from  
:33:34 2 whether you did any analysis or not, did you ever form an  
14:33:36 3 opinion in your own mind as to whether the Sports Shinko  
14:33:40 4 entities should enter into management agreements with terms set  
14:33:47 5 forth in Exhibit 7?  
14:33:50 6 A. Well, as I sit here, I don't think I gave it any  
14:33:53 7 thought.

14:33:56 8 MR. WAKUZAWA: Why don't we take another break; it's  
14:33:59 9 been over an hour.

14:34:02 10 (Recess taken, 2:34 p.m. to 2:41 p.m.)

14:41:40 11 Deposition Exhibit 8 was  
14:47:57 12 marked for identification.

14:47:57 13 Q. Mr. Mukai, do you recognize what Exhibit 8 is?

:48:02 14 A. Yes.

14:48:02 15 Q. Can you tell me what it is.

14:48:03 16 A. It's a First Amended Hotel Management Agreement.

14:48:08 17 Q. Do you know why there was an amendment made to this  
14:48:13 18 agreement, the hotel management agreement? What prompted the  
14:48:20 19 amendment?

14:48:20 20 A. In the recitals, I think that raised.

14:48:45 21 Q. Why don't I ask the question this way then. Apart  
14:49:04 22 from what is stated in the recitals, are you aware of what  
14:49:08 23 prompted the first amendment to the hotel management agreement,  
14:49:12 24 Exhibit 8, to be undertaken?

14:49:19 25 MR. BORDNER: Asking if there's anything other than

1 recall.

2 Q. Are you aware of any comments anyone from your firm  
3 gave to Mr. Fukuda about the Stock Option Agreement based  
4 upon his request in Exhibit 18?

5 A. There may have been, but I don't recall.

6 Q. Did you or your firm have any role in drafting or  
7 revising the Stock Option Agreement attached to Exhibit 18?

8 A. We may have. I'm not sure.

9 Q. Do you have any reason to believe that you did not?

10 A. No.

11 Q. Did you ever formulate an opinion as to whether it  
12 was a good or bad idea for Satoshi Kinoshita to be a part of  
13 this Stock Option Agreement, Exhibit 18?

14 A. I don't recall.

15 Q. Do you recall anyone in your firm ever coming to the  
16 conclusion as to whether it was a good or a bad idea from  
17 the perspective of Satoshi Kinoshita to enter into this  
18 Stock Option Agreement?

19 A. I don't recall.

20 Q. Do you recall any concerns that you had with this  
21 Stock Option Agreement attached to Exhibit 18 at any time?

22 A. We may have prepared the drafts for these agreements  
23 at the request of -- of somebody from Sports Shinko and so I  
24 can't recall any comments one way or the other whether they  
25 should or should not be doing this.

1 Q. I'm asking a slightly different question. Did you  
2 ever formulate any concerns in your own mind about this  
3 Stock Option Agreement attached to Exhibit 18 at any time?

4 A. I don't recall.

5 Q. Do you recall anyone at your firm ever formulating  
6 concerns about the Stock Option Agreement attached to  
7 Exhibit 18 at any time?

8 A. I don't recall.

9 Q. Do you recall who at Sports Shinko requested that  
10 you prepare drafts of the Stock Option Agreement?

11 A. I can't recall.

12 Q. Was it Satoshi Kinoshita?

13 A. Could be.

14 Q. Is that your best recollection as to who it was?

15 A. I want to move the -- this deposition along, so I'm  
16 speculating again, and -- but I would suspect that it was  
17 Satoshi. Suspect.

18 Q. When you prepared the drafts of the Stock Option  
19 Agreement, you were preparing the drafts as an attorney for  
20 the Sports Shinko Hawaii entities?

21 A. I don't -- I don't know if there's any definitive  
22 client that -- that we were doing it for. We were doing it  
23 at the request of Satoshi so we drafted -- as I say, I  
24 suspect it was Satoshi, and we just drafted it pursuant to  
25 his request.

1 Q. When you and your firm were preparing the drafts of  
2 the Stock Option Agreement attached to Exhibit 18, who in  
3 your mind did you think you were representing in drafting  
4 the Stock Option Agreements?

5 A. There was really -- there was really no thoughts. I  
6 -- personally, I guess. I'm not sure about Mr. Kawatani.  
7 You have to ask him.

8 Q. Did you have any understanding as to why Mr. Nishida  
9 was giving Satoshi, Takeshi, and Toshiya Kinoshita an option  
10 to purchase the shares of Resort Management Services Hawaii,  
11 Inc.?

12 MR. BORDNER: I'm going to object to the extent your  
13 question assumes that this agreement was ever executed. And  
14 the question seems to implicate or suggest that, and I  
15 object to that without foundation.

16 MR. WAKUZAWA: You can answer.

17 THE WITNESS: Okay. You know, I think I've  
18 mentioned that before that, I've never seen it executed so I  
19 think what you've got to do is you have to ask Mr. Nishida  
20 and the other parties involved. I have no personal  
21 knowledge as to why.

22 BY MR. WAKUZAWA:

23 Q. Let me just follow up so that we're clear. Did you  
24 ever have an understanding as to why you were drafting a  
25 document in which Mr. Nishida was giving Satoshi, Takeshi,

1 A. I think that's my interpretation of what Eric was  
2 doing.

3 Q. That's correct, what I said?

4 MR. BORDNER: I believe he answered your question.

5 THE WITNESS: Yes.

6 BY MR. WAKUZAWA:

7 Q. So apart from the general warning to do things above  
8 board reflected in Exhibit 11, at any time did you have any  
9 concern that a plan of action or action taken by the  
10 Kinoshitas or any Sports Shinko company raised fraudulent  
11 conveyance issues?

12 A. I don't have a recollection.

13 Q. Apart from Exhibit 11, do you recall anyone at your  
14 firm having a concern that a plan of action or action taken  
15 by the Kinoshitas or any Sports Shinko company raised  
16 fraudulent conveyance issues?

17 A. I don't have a recollection.

18 Q. Did you ever investigate or look into whether any  
19 plan of action or action taken by the Kinoshitas or any  
20 Sports Shinko company raised fraudulent conveyance issues?

21 A. I have no recollection.

22 Q. Do you recall anyone at your firm ever investigating  
23 or looking into whether a plan of action or action taken by  
24 the Kinoshitas or any Sports Shinko company raised  
25 fraudulent conveyance issues?

1 A. I have no recollection.

2 Q. Did Satoshi Kinoshita ever tell you that Sports  
3 Shinko Japan or any of its subsidiaries was in a pinch  
4 financially?

5 A. You got to redefine what you mean by pinch. I mean,  
6 if you're -- if you're saying you need money, everybody  
7 needs money so I'm not -- I'm not -- I'm not clear as to  
8 what you're saying.

9 If you're saying yeah, they -- they're not -- they  
10 didn't make money this month, he probably said that. I'm --  
11 I can't recall.

12 Q. Do you recall him ever using that specific term "in  
13 a pinch financially?"

14 A. I don't recall.

15 Q. I believe in response to the prior question you said  
16 that Satoshi probably said we didn't make money in a certain  
17 month, is that correct?

18 MR. BORDNER: I'm going to object. You're  
19 misstating his testimony. He's already answered the  
20 question you posed previously, and your attempt to  
21 recharacterize it, I think, is unfair to the witness. I  
22 object.

23 THE WITNESS: Your -- could you repeat the question?  
24 BY MR. WAKUZAWA:

25 Q. Well, I can ask a different question. Did Satoshi

1 A. I believe so.

2 Q. You are listed as the attorney at the top left-hand  
3 corner. Is that because you were considered the responsible  
4 attorney for this matter?

5 A. I really don't know. I guess so.

6 Q. Do you know of any other reason that you were listed  
7 at the top of the invoice on the left-hand side of the page?

8 A. Do I know any reason? I don't know.

9 Q. December 4, 2001, your time entry says "Review  
10 structure, review memo."

11 Do you see that?

12 A. Mm-hmm.

13 Q. Yes?

14 A. Yes.

15 Q. What did you mean by review structure?

16 A. I don't have a recollection.

17 Q. Do you have any idea of what you were referring to?

18 A. Yeah, there were -- there were different things that  
19 was going on at the time. I can't -- I don't have a  
20 specific recollection -- I have no recollection as to what  
21 it might specifically pertain to.

22 Q. Do you have a list of possibilities of what that  
23 might refer to, based upon the various things that you are  
24 aware of that was going on at that time?

25 A. There were some transactions involving various

1 A. No.

2 Q. Did you or anyone from your firm to your knowledge  
3 ever tell Satoshi or Toshio after November 26th, 2001, that  
4 it would not be a good idea to proceed with either plan A or  
5 B, as referenced in Exhibit 31?

6 A. I don't believe so.

7 Q. Did you or anyone from your firm to your knowledge  
8 ever tell Satoshi or Toshio that it was not a good idea to  
9 proceed with either plan A or B, as referenced in  
10 Exhibit 31?

11 A. I think what happened is we sent this over to Grant  
12 Thornton for analysis.

13 Q. "This" is Exhibit 31?

14 A. Or they had it, and I think that's probably the  
15 reference.

16 Q. But you're talking about Exhibit 31?

17 A. That's correct. That's probably the reference in  
18 that.

19 Q. You're talking about the reference to the plan in  
20 Grant Thornton's memo, Exhibit 29?

21 A. Yeah, I would -- I would surmise.

22 Q. The answer is yes?

23 A. Yes. So I think it was -- I think it was Grant  
24 Thornton doing the analysis.

25 Q. Just so I'm clear, though, do you recall yourself or

## 1 IN THE UNITED STATES DISTRICT COURT

## 2 FOR THE DISTRICT OF HAWAII

3

4 SPORTS SHINKO CO., LTD., ) CV 04-00124 ACK-BMK  
5 Plaintiff, ) CV 04-00127 ACK-BMK  
6 vs. ) ) CONSOLIDATED CASES  
7 QK HOTEL, LLC., et al., ) )  
8 Defendants, ) )  
9 and ) )  
10 FRANKLIN K. MUKAI, et al., ) )  
11 Third-Party ) )  
12 Plaintiffs, ) DEPOSITION OF  
13 vs. ) FRANKLIN K. MUKAI  
14 SPORTS SHINKO (USA) CO., ) Volume I  
15 LTD., et al., ) (Pages 1 - 150)  
16 Third-Party ) ) (Exhibits 1 - 11)  
17 Defendants, ) )  
18 and ) )  
19 SPORTS SHINKO (HAWAII) CO., ) )  
20 LTD., et al., ) )  
21 Third-Party ) )  
22 Defendants/ ) )  
23 Counterclaimants, ) )  
24 vs. ) )  
25 QK HOTEL, LLC, et al., ) )  
26 Third-Party ) )  
27 Counterclaim ) )  
28 Defendants. ) )  
29 AND CONSOLIDATED CASES ) )  
30

1 IN THE UNITED STATES DISTRICT COURT  
2

3 FOR THE DISTRICT OF HAWAII  
4

5 SPORTS SHINKO CO., LTD., )  
6

7 Plaintiff, ) CV 04-00124 ACK-BMK  
8

9 ) CV 04-00127 ACK-BMK  
10 vs. )  
11 )  
12 QK HOTEL, LLC, et al., )  
13 )  
14 Defendants, ) DEPOSITION OF  
15 ) FRANKLIN MUKAI  
16 and ) VOLUME II  
17 )  
18 FRANKLIN K. MUKAI, et al., )  
19 )  
20 Third-Party )  
21 Plaintiffs, )  
22 )  
23 vs. )  
24 )  
25 SPORTS SHINKO (USA) CO., LTD., )  
et al., )  
Third-Party )  
Defendants, )  
and )

1 SPORTS SHINKO (HAWAII) CO., )  
2 LTD., et al., )  
3 Third-Party Defendants/ )  
4 Counterclaimants, )  
5 )  
6 vs. )  
7 )  
8 QK HOTEL, LLC, et al., )  
9 Third-Party Counterclaim, )  
10 Defendants. )  
11 )  
12 AND CONSOLIDATED CASES )  
13  
14

## 15 DEPOSITION OF FRANKLIN MUKAI

## 16 VOLUME II

17 Taken on behalf of the Plaintiffs and Third-Party Defendants  
18 at the law offices of Alston Hunt Floyd & Ing, located at  
19 1001 Bishop Street, American Savings Bank Tower, Suite 1800,  
20 Honolulu, Hawaii 96813, commencing at 9:00 a.m. on Friday,  
21 December 21, 2007, pursuant to notice.

22  
23 BEFORE:

24 WENDY M. WATANABE, Notary Public, State of Hawaii  
25 Hawaii Certified Court Reporter, CSR 401

1 DEPOSITION OF FRANKLIN MUKAI  
2

## 3 APPEARANCES:

4 For the Plaintiffs and Third-Party Defendants the Sports  
5 Shinko Companies:

6 BRUCE WAKUZAWA, ESQ.

7 Alston Hunt Floyd &amp; Ing

8 1001 Bishop Street

9 American Saving Bank Tower, Suite 1800

10 Honolulu, Hawaii 96813

11  
12 For the Defendant and Third-Party Plaintiff, Franklin Mukai:

13 WILLIAM BORDNER, ESQ.

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15 Pacific Guardian Center, Mauka Tower

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17 Honolulu, Hawaii 96813

18  
19 JOHN YAMANO, ESQ.

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21 Five Waterfront Plaza, 4th Floor

22 500 Ala Moana Boulevard

23 Honolulu, Hawaii 96813

1 DEPOSITION OF FRANKLIN MUKAI  
2

## 3 APPEARANCES:

4 For the Defendants, Counterclaimants, and Third-Party  
5 Plaintiffs KG Holdings, LLC, Kiahuna Golf Club, LLC, KG  
6 Kauai Development, LLC, Pukalani Golf Club, LLC, KG Maui  
7 Development, LLC, Mililani Golf Club, LLC, QK Hotel, LLC,  
8 and OR Hotel, LLC:

9 ROBERT MARKS, ESQ.

10 Price Okamoto Himeno &amp; Lum

11 Ocean View Center, Suite 728

12 707 Richards Street

13 Honolulu, Hawaii 96813

25 ALSO PRESENT: WAYNE TANIGAWA

1 STATE OF HAWAII )  
2 ) ss.  
3 CITY AND COUNTY OF HONOLULU )  
4

5 I, WENDY M. WATANABE, CSR 401, Notary Public, State  
6 of Hawaii, hereby certify:

7 That on Friday, December 21, 2007, at 9:00 a.m.  
8 appeared before me FRANKLIN MUKAI, the witness whose  
9 deposition is contained herein; that prior to being  
10 examined, the witness was previously duly sworn;

11 That the deposition was taken by me in machine  
12 shorthand and was thereafter reduced to typewriting by  
13 computer-aided transcription; that the foregoing represents,  
14 to the best of my ability, a full, true, and correct  
15 transcript of said deposition.

16 I further certify that I am not an attorney for any  
17 of the parties hereto, nor in any way concerned with the  
18 cause.

19  
20  
21 Dated: December 27, 2007  
22  
23

24 Wendy M. Watanabe  
25 Notary Public, State of Hawaii  
My Commission expires: 04/07/2010